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10/631,266	07/31/2003	Edward Z. Cai	CAI-05082000D1	3788

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EXAMINER

KUHNS, SARAH LOUISE

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/631,266

Applicant(s)

CAI, EDWARD Z.

Examiner

Sarah L Kuhns

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected:
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

1. The specification is objected to because of the following informalities:  
Page 2, line 18 – “comprises” should be “comprise”  
Page 4, line 9 – “bottom 14” should be “bottom “  
Page 5, line 25 – “comprises” should be “comprising”  
Page 7, line 1 – “become” should be “becomes”  
Page 9, line 1 – “means such punching” should be “means such as punching”  
90 is included in the drawings, but not defined in the specification  
Appropriate correction is required.

### ***Claim Objections***

2. Claims 14 and 19 are objected to because of the following informalities: “block” should be “blocking.” Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 14-19, 24, and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-6, 24-26, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Welker, U.S. Patent, 5,168,140.

In regard to claims 1, 24, 26 and 29, Welker discloses a method for brewing a coffee beverage from a supply of flavor-containing materials comprising roasted coffee grounds (column 1, line 31) comprising providing a brewing device comprising a porous filter having a first surface for contacting the flavor-containing materials and liquid in a container (column 1, line 37), a plurality of filtration openings for allowing liquid extraction to pass through as a beverage while blocking all or substantially all coffee grounds and a second surface for receiving the beverage from the plurality of filtration openings (column 3, line 43); and a step of introducing liquid into the container to allow

the formation of a dispersion containing the liquid and flavor containing materials (column 1, line 31); a step of tilting the container to generate a liquid head to act on the first surface of the porous filter to drive the liquid extraction through the plurality of filtration openings to the second surface of porous filter as a coffee beverage (column 1, line 38). Welker also teaches that that a lid with a downward sloping bottom wall assists in the washing away of solids tending to adhere to the lower surface of the porous filter (column 4, line 9). It is therefore inherent that a layer of coffee grounds will float on top of the dispersion, as well as that when the container is tipped, the surface of the dispersion will be disturbed, thereby breaking the layer of floated flavor-containing materials and preventing the clogging of the porous filter by the layer of floated flavor-containing materials and increasing the beverage flow through the filtration openings.

In regard to claims 2 and 25, Welker discloses the tilting of the container for the purpose of drinking the beverage (column 1, line 38). It is inherent that disturbing the surface of the dispersion, which will occur whenever the beverage is tilted for drinking, will break the layer of floated flavor-containing materials and prevent the clogging of the porous filter by the layer of floated flavor-containing materials and increase the beverage flow through the filtration openings.

In regard to claim 3, Welker discloses the device further comprising a flow facilitator comprising at least one selective opening, which is adapted to be sufficiently small to restrict the flavor-containing materials from passing through during the steps of breaking and tilting and adapted to be or become sufficiently permeable to air to allow air to enter the container during the step of tilting (column 1, line 34).

In regard to claim 4, Welker discloses a method further comprising a step of regenerating the porous filter by moving the container in such a way to cause the liquid therein to wash the flavor-containing materials accumulated on the lower surface of the porous filter off into the container (column 4, line 9).

In regard to claim 5, it is inherent in Welker that tilting the container for the purpose of drinking the beverage will additionally cause liquid to slosh against the first side of the porous filter thereby regenerating it by causing the flavor-containing materials accumulated thereon to fall off or to be washed off into the container. In addition, Welker teaches the use of a lid with a downward sloping bottom wall that further assists in the washing off of solids that adhere to the lower surface of the porous filter (column 4, line 10).

In regard to claim 6, it is inherent that in Welker that the container will be rested in substantially still position for a period time after the step of breaking since the consumer is likely to set the container down during pauses in drinking. It is also inherent that the step of resting will cause a further increase of the filtration flow through the filtration openings because after agitation the flavor-containing materials and beverage will settle.

5. Claims 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Levinson, U.S. Patent, 5,635,233.

In regard to claim 11, Levinson discloses a method for making beverage from flavor-containing materials with a device having a container (38), a porous filter (13), and blades (40) comprising putting roasted coffee beans (3) into the container, grinding

the flavor-containing materials in the container to produce ground flavor-containing materials (column 6, line 50); introducing liquid into the container (column 6, line 55); extracting the aroma and/or flavor compounds out of the ground flavor-containing materials with the liquid in the container to produce a beverage (column 7, line 5). It is inherent that the consumer will tilt the container when a drink is taken. It follows that tilting the container will generate a liquid head that will drive the beverage through the porous filter.

In regard to claim 12, Levinson discloses a step of turning the blades to stir the flavor containing materials and liquid to form a dispersion in the container (figure 9).

In regard to claim 13, Levinson further discloses a step of heating the liquid in the container (column 6, line 58).

In regard to claim 14, Levinson discloses a method for brewing milk-based coffee drinks in a container from a supply of roasted coffee grounds (3) comprising providing a device comprising a porous filter (13) having a first surface adapted to contact roasted coffee grounds, a plurality of filtration openings adapted allow liquid extraction to pass through while blocking substantially all roasted coffee grounds and a second surface for receiving the liquid extraction from the filtration openings (figure 9); a step of introducing a first amount of hot water into a container to produce a dispersion comprising the hot water and roasted coffee grounds (2); a step of allowing the hot water to extract the roasted coffee grounds for a certain amount of time in the dispersion to produce a strong dose of coffee extraction (column 3, line 40); and a step of introducing a second amount of hot or frothed milk into the container to produce a dispersion of the roasted

coffee grounds and the milk-containing coffee drink (column 6, line 5). Although, Levinson does not expressly disclose the tilting of the container it is inherent that a consumer will tilt the container every time a drink is taken. It follows that a liquid head will be generated when the container is tilted and will drive the milk-containing coffee drink through the filtration openings.

6. Claims 1, 2, 4-6, 24-26, and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Calagui, U.S. Patent, 6,263,781.

In regard to claims 1, 24, 26 and 29, Calagui discloses a method for brewing a coffee beverage in a disposable container from a supply of flavor-containing materials comprising roasted coffee grounds (column 2, line 17) comprising providing a brewing device comprising a porous filter having a first surface for contacting the flavor-containing materials and liquid in a container, a plurality of filtration openings for allowing liquid extraction to pass through as a beverage while blocking all or substantially all coffee grounds and a second surface for receiving the beverage from the plurality of filtration openings (column 2, line 20); and a step of introducing liquid into the container to allow the formation of a dispersion containing the liquid and flavor containing materials (column 4, line 3); a step of tilting the container to generate a liquid head to act on the first surface of the porous filter to drive the liquid extraction through the plurality of filtration openings to the second surface of porous filter as a coffee beverage (column 4, line 17). It is inherent that a layer of coffee grounds will float on top of the dispersion, as well as that when the container is tipped, the surface of the dispersion will be disturbed, thereby breaking the layer of floated flavor-containing



materials and preventing the clogging of the porous filter by the layer of floated flavor-containing materials and increasing the beverage flow through the filtration openings.

In regard to claims 2 and 25, Calagui discloses the tilting of the container for the purpose of drinking the beverage (column 4, line 17). It is inherent that disturbing the surface of the dispersion, which will occur whenever the beverage is tilted for drinking, will break the layer of floated flavor-containing materials and prevent the clogging of the porous filter by the layer of floated flavor-containing materials and increase the beverage flow through the filtration openings.

In regard to claim 4, Calagui discloses a method further comprising a step of regenerating the porous filter by moving the container in such a way to cause the liquid therein to wash the flavor-containing materials accumulated on the lower surface of the porous filter off into the container (figure 3).

In regard to claim 5, it is inherent in Calagui that tilting the container for the purpose of drinking the beverage will additionally cause liquid to slosh against the first side of the porous filter thereby regenerating it by causing the flavor-containing materials accumulated thereon to fall off or to be washed off into the container. In addition, Welker teaches the use of a lid with a downward sloping bottom wall that further assists in the washing off of solids that adhere to the lower surface of the porous filter (figure 3).

In regard to claim 6, it is inherent that in Calagui that the container will be rested in substantially still position for a period time after the step of breaking since the consumer is likely to set the container down during pauses in drinking. It is also

inherent that the step of resting will cause a further increase of the filtration flow through the filtration openings because after agitation the flavor-containing materials and beverage will settle.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7-10, 27, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Welker in view of Dawson, GB 2,174,890 A.

In regard to claims 7 and 27, Welker teaches the addition of flavor-containing materials into a transient storage chamber (column 1, line 30), but fails to disclose a step of delivering the flavor-containing materials therein into the container after the transient storage chamber has been heated to a certain temperature. However, Welker teaches an obvious alternative the heating of the flavor-containing materials after they have already been added to the storage chamber.

In regard to claim 8, Welker fails to disclose a step comprising moving one of a plate, a rod, and a spoon in a repetitive, substantially circular or linear motion within the container. However, it is very common for people to stir their coffee with various utensils in various motions and would therefore be obvious to do so here in order to ensure uniformity of the beverage.

In regard to claim 9, Welker fails to disclose a porous filter that is irremovably or permanently connected to the container. However, Dawson discloses an in-cup drink wherein an infusible solid, such as coffee, is constrained permanently adjacent the bottom of a cup by means of a porous filter (abstract). It would therefore be obvious to permanently connect the porous filter to the container in order to better prevent spilling of the spent flavor-containing materials.

In regard to claim 10, Welker discloses a method comprising providing a supply of roasted coffee grounds to be extracted by water, but fails to disclose a supply of milk or the like solids. Dawson teaches that a conventional method of making a beverage includes combining hot water and flavor-containing materials with milk and/or sugar as desired (page 1, line 46). In addition, it very common to add milk or the like to coffee drinks. As such, it would be obvious to add milk to the beverage of Welker in order to make the beverage appealing to consumers who do not care for black coffee.

In regard to claim 28, Welker fails to expressly disclose a step of adding an amount of soluble additive. However it is very common for consumers to add sugar, sweetener, powdered creamers, and other dissolvable additives to their coffee as evidenced by Dawson (page 1, line 48) and it would therefore be obvious to include the addition of additives in order to alter the taste of the coffee to account for individual preferences.

8. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson. Levinson discloses a method for brewing milked-based coffee drinks (column 6, line 20) that are variants of espresso (column 6, line 37). Levinson fails to disclose

the amounts of hot water or hot milk used in the making of the beverage. However, it would be obvious to alter the hot water and milk amounts used depending on the desired size and taste of the beverage.

9. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dawson in view of Lucas, U.S. Patent 4,134,492.

In regard to claim 16, Dawson discloses a method for brewing a beverage such as coffee (page 1, line 83) from a supply of flavor-containing materials comprising providing a disposable brewing device comprising a disposable container (page 1, line 80) including a direct connection in which the porous filter (38) is directly attached to the disposable container (page 2, line 73); a supply of flavor-containing materials in the disposable container (32), the porous filter (38) having a first surface adapted to contact the flavor-containing materials, a plurality of filtration openings for allowing liquid extraction to pass through as a beverage while blocking all or substantially all solids and a second surface for receiving the beverage from the plurality of filtration openings (page 2, line 80); a step of pouring hot liquid including at least one of hot water (page 1, line 129) and hot milk (page 1, line 48) onto the second surface of the porous filter to cause the liquid to filter through the filtration openings to the flavor-containing materials in the disposable container, wherein the hot liquid forms a dispersion with the flavor-containing and extracts the flavor-containing materials to form a liquid extraction (page 1, line 130). It is expected that the consumer will tilt the beverage when taking a drink or pouring a cup. It follows that this tilting of the device will generate a liquid head to act on the first surface of the porous filter to drive the liquid extraction in the disposable

container through the plurality of filtration openings as to the second surface of porous filter as a freshly brewed beverage. Dawson fails to disclose a cover for sealing the device to maintain the freshness of the flavor-containing materials therein. Lucas also discloses a disposable cup for making coffee and includes a liner that seals the flavor-containing materials in the cup and a step of removing the liner prior to adding hot water (column 2, line 35). It would therefore be obvious to use a liner or cover in the invention of Dawson in order to maintain the freshness of the flavor-containing materials and prevent contamination.

In regard to claim 17, Dawson discloses a step of disposing the brewing device after the beverage is consumed (page 1, line 80).

In regard to claim 18, Dawson discloses the addition of additives (i.e. sugar) into the container, wherein the step of pouring hot liquid into the container dissolves the additives (page 1, line 46).

10. Claims 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levinson in view of Pastrick, U.S. Patent Re. 34,482.

In regard to claims 19, 21 and 22, Levinson discloses a method for brewing a coffee beverage in a container from flavor-containing materials comprising roasted coffee grounds (3) comprising providing a device comprising a porous filter (13) a plurality of filtration openings adapted allow liquid extraction to pass through while blocking substantially all roasted coffee grounds and a second surface for receiving the liquid extraction from the filtration openings (figure 9); a step of introducing liquid into a container to produce a dispersion comprising the liquid and roasted coffee grounds

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(column 6, line 55); a step of allowing hot liquid to extract the roasted coffee grounds for a certain amount of time in the dispersion to produce a liquid extraction (column 3, line 40). Although, Levinson does not expressly disclose the tilting of the container it is inherent that a consumer will tilt the container every time a drink is taken. It follows that a liquid head will be generated when the container is tilted and will drive the coffee drink through the filtration openings. Levinson fails to disclose a step of adding an amount of ice into the container to substantially quench or stop the extraction of the roasted coffee grounds. However, it is well known in the field to add ice to coffee to make iced or cold coffee drinks as evidenced by Pastrick (column 6, line 55). It would therefore be obvious to add ice to the coffee beverage in order to provide a cold drink if so desired.

In regard to claim 20, Levinson discloses a method for brewing milked-based coffee drinks (column 6, line 20) that are variants of espresso (column 6, line 37) comprising a step of introducing a first amount of hot water into a container to produce a dispersion comprising the hot water and roasted coffee grounds (2); a step of allowing the hot water to extract the roasted coffee grounds for a certain amount of time in the dispersion to produce a strong dose of coffee extraction (column 3, line 40); and a step of introducing a second amount of hot or frothed milk into the container to produce a dispersion of the roasted coffee grounds and the milk-containing coffee drink (column 6, line 5).

In regard to claim 23, Levinson fails to disclose a disposable device. Dawson discloses an in-cup drink wherein an infusible solid, such as coffee, is constrained permanently adjacent the bottom of a cup by means of a porous filter (abstract). In

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addition, Dawson discloses a disposable device (page 1, line 80). It would therefore be obvious to make the invention of Levinson disposable in order to avoid having to clean the device.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah L. Kuhns whose telephone number is 571-272-1088. The examiner can normally be reached on Monday - Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SLK

  
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